

**APR 25 2005**

**NOT FOR PUBLICATION**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

EMEIL KAMEL,

Plaintiff - Appellant,

v.

EQUILON ENTERPRISES, LLC; et al.,

Defendants - Appellees.

No. 03-56162

D.C. No. CV-00-10433-RGK

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
R. Gary Klausner, District Judge, Presiding

Argued and Submitted February 18, 2005  
Pasadena, California

Before: TASHIMA, WARDLAW, Circuit Judges, and COLLINS, District Judge.\*\*

Emeil Kamel appeals from a favorable judgment against Equilon  
Enterprises, LLC (“Equilon”) for its violation of the Petroleum Marketing

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* The Honorable Raner C. Collins, United States District Judge for the District of Arizona, sitting by designation.

Practices Act (“PMPA”), 15 U.S.C. § 2801, et seq., contesting the remedial portion of that judgment. He asserts that the district court should have issued an injunction against Equilon forcing a sale of the service station rather than finding that the franchise relationship remained in effect. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

During the first phrase of trial, the jury found that Equilon’s offer to sell Kamel its interest in the premises upon which Kamel’s leased gas station is located was not bona fide, and that the fair market value of the premises in the year 2000 was \$480,000. During the second phase bench trial, the district court found that Equilon’s decision to sell the premises was made in good faith, in the normal course of business, and lacked a discriminatory motive or intent.<sup>1</sup> It then awarded Kamel \$64,500 that he had deposited with Equilon as a down payment on the premises, interest on the down payment, costs, and fees. Kamel contends that in order to make him whole and to fulfill the purposes of the PMPA, the district court should have issued an injunction requiring Equilon to sell the station to him at the year 2000 market value.

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<sup>1</sup>Under the PMPA, a decision is made in “good faith” if it is not discriminatorily motivated or pretextual. *See Unocal Corp. v. Kaabipour*, 177 F.3d 755, 767 (9th Cir. 1999). On the other hand, a “bona fide” offer “is measured by an objective market standard.” *Ellis v. Mobil Oil*, 969 F.2d 784, 787 (9th Cir. 1992).

A district court's decision to grant or deny an injunction is reviewed for abuse of discretion. *Ting v. AT&T*, 319 F.3d 1126, 1135 (9th Cir. 2003). The district court did not abuse its discretion in fashioning the remedy it did.

Although the PMPA's broad purpose is to protect franchisees, and its terms are to be liberally construed, *Unocal*, 177 F.3d at 765, Kamel fails to cite any case law or any portion of the PMPA itself that would mandate a forced sale of the station.

The PMPA, 15 U.S.C. § 2805(b), states that

(1) In any action under subsection (a) of this section, the court shall grant such equitable relief as the court determines is necessary to remedy the effects of any failure to comply with the requirements of section 102 or 103 [15 USCS § 2802 or 2803] of this title, including declaratory judgment, mandatory or prohibitive injunctive relief, and interim equitable relief.

In *Valentine v. Mobil Oil Corp.*, 789 F.2d 1388 (9th Cir. 1986), we affirmed the district court's grant of summary judgment in favor of a franchisor who refused to sell the premises to the franchisee after making material alterations. We observed that "[t]he district court carefully considered the case in light of [the good faith] standard" and gave the franchisee "every opportunity to present evidence . . . to suggest other circumstances that might evidence bad faith or ulterior motive on Mobil's part." *Id.* at 1393. In Kamel's case, the district court considered a number of factors - including Equilon's good faith - in fashioning its remedy. By doing so,

the district court chose to return the parties to the status quo at the time of Equilon's offer, rather than to engage in "judicial second-guessing . . . of an otherwise legitimate business decision," which is precluded "[s]o long as the franchisor does not have a discriminatory motive" and is not acting under "pretext." *Id.* at 1392.

Kamel misplaces reliance upon our decision in *Ellis* for the proposition that he "has a right to a bona fide offer due to Equilon's violation of the PMPA." In *Ellis*, we merely held that the district court had the duty to make specific findings about the reasonableness of a franchisor's offer. Such findings were made here. Kamel also cites *Florham Park v. Chevron U.S.A., Inc.*, 680 F.Supp 159, 167 n.7 (D. N.J. 1988), in which the court mentioned, but did not grant, equitable relief in the form of a forced sale, and offered no indication of what factors it might consider in doing so in the future. These cases thus have no bearing on the district court's exercise of discretion here. Indeed, "[t]he most common remedy for nonrenewal violations under the PMPA appears to be an order disallowing the nonrenewal and compelling the defendant to continue the franchise subject to the defendant's right to properly terminate the franchise." *L.M.P. Service, Inc. v. Shell Oil Co.*, 116 F.Supp 2d 645, 647 (D. Md. 2000).

Equilon was prevented from selling the station to anyone else during the pendency of the lawsuit, and Kamel continued to benefit from possession of the station. Both sides bore the risk that the fair market value of the leased premises could rise or fall during the litigation. The district court did not abuse its discretion by denying Kamel the equitable relief he seeks.

**AFFIRMED.**